

## 15A Am. Jur. 2d Clerks of Court § 46

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### Clerks of Court

Lonnie E. Griffith, Jr., J.D.

#### V. Powers and Duties

##### B. Distinguishing Ministerial and Judicial Functions

## § 46. Judicial and quasi-judicial acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  66

The judicial power of a court or judge generally may not be delegated to a court clerk,<sup>1</sup> and a clerk of a court may not exercise judicial power except when authorized by a constitutional or legislative provision.<sup>2</sup> The clerk's judicial authority is strictly limited within the terms of the statutory or constitutional provision conferring it.<sup>3</sup> Where a clerk's function is judicial or quasi-judicial, the clerk may be immune from liability.<sup>4</sup> Judicial acts include:

- the rendition of the judgment<sup>5</sup>
- the determination of claims for breach of duty, negligence, and fraud<sup>6</sup>
- the imposition of a fine or penalty,<sup>7</sup> even where mandatory<sup>8</sup>

Certain acts, although partially judicial in nature, or quasi-judicial, may be performed by the clerk of the court, including:

- the issuance of warrants of arrest<sup>9</sup>
- the issuance of subpoenas<sup>10</sup>
- the issuance of summons<sup>11</sup>
- the transmission of notice of appeal<sup>12</sup>
- the communication of court orders<sup>13</sup>

The clerk may engage in the appointment of guardians, after the court's adjudication of an incompetency,<sup>14</sup> but not the taking of an affidavit in a criminal proceeding,<sup>15</sup> or the continuation of a contested adoption proceeding.<sup>16</sup>

**Observation:**

In one jurisdiction, a clerk for the state's highest court has the statutory authority to give an opinion on any question of the interpretation of any rule of administration promulgated by the court,<sup>17</sup> while in other jurisdictions, a clerk of court, as a purely ministerial officer, has no discretion to interpret rules and statutes.<sup>18</sup>

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Footnotes

- 1                   § 45.
- 2                   People v. Frontier Pacific Ins. Co., 83 Cal. App. 4th 1289, 100 Cal. Rptr. 2d 433 (3d Dist. 2000).
- 3                   Matter of Legitimation of Locklear by Jones, 314 N.C. 412, 334 S.E.2d 46 (1985); Mikrut v. State, 212 Wis. 2d 859, 569 N.W.2d 765 (Ct. App. 1997).
- 4                   § 59.
- 5                   People v. Mitchell, 395 Ill. App. 3d 161, 334 Ill. Dec. 209, 916 N.E.2d 624 (4th Dist. 2009), appeal denied, 235 Ill. 2d 599, 338 Ill. Dec. 253, 924 N.E.2d 459 (2010).
- 6                   Livesay v. Carolina First Bank, 200 N.C. App. 306, 683 S.E.2d 453 (2009), appeal dismissed, review denied, 363 N.C. 805, 690 S.E.2d 701 (2010).
- 7                   People v. Shaw, 386 Ill. App. 3d 704, 325 Ill. Dec. 708, 898 N.E.2d 755 (4th Dist. 2008), appeal denied, 232 Ill. 2d 593, 331 Ill. Dec. 375, 910 N.E.2d 1131 (2009).
- 8                   People v. Schneider, 403 Ill. App. 3d 301, 342 Ill. Dec. 798, 933 N.E.2d 384 (2d Dist. 2010).
- 9                   Stine v. Shuttle, 134 Ind. App. 67, 186 N.E.2d 168 (1962).
- 10                  Harris v. State, 331 Md. 137, 626 A.2d 946 (1993).
- 11                  Torrey Hills Community Coalition v. City of San Diego, 186 Cal. App. 4th 429, 111 Cal. Rptr. 3d 578 (4th Dist. 2010), review denied, (Oct. 13, 2010).
- 12                  G.W. v. Rushing, 22 So. 3d 819 (Fla. Dist. Ct. App. 2d Dist. 2009); In re Smith, 270 S.W.3d 783 (Tex. App. Waco 2008).
- 13                  McGee v. Hicks, 303 Ga. App. 130, 693 S.E.2d 130 (2010), cert. granted, (Sept. 20, 2010) and aff'd but criticized on other grounds, 11 Fulton County D. Rep. 2069, 2011 WL 2610368 (Ga. 2011).
- 14                  McKoy v. McKoy, 689 S.E.2d 590 (N.C. Ct. App. 2010).
- 15                  Cox v. Perkins, 151 Ga. 632, 107 S.E. 863, 16 A.L.R. 918 (1921).
- 16                  Norris v. Norris, 692 S.E.2d 190 (N.C. Ct. App. 2010).
- 17                  Opinion of the Clerk, 386 So. 2d 739 (Ala. 1980).
- 18                  Dyson v. Com. Dept. of Transp. Bureau of Driver Licensing, 18 A.3d 414 (Pa. Commw. Ct. 2011).